

Chapter 4
DRAINAGE AND SIDE YARD EASEMENTS

	Page
Sec. 4-1. Drainage Complaint Policy.	423
Sec. 4-2. Side Yard Easement Policy.	423-425

WOODBIDGE VILLAGE ASSOCIATION CODE

[This page is intentionally left blank]

Section 4-1. Drainage Complaint Policy.

(a) It has been brought to the attention of the Association that, in certain circumstances, water draining from an adjacent lot can cause damage to an adjacent resident's lot. If a drainage problem is claimed to exist, the following action must be taken by the member in order for the Association to consider taking further action of the provisions of the Woodbridge Village Association Declaration of Covenants, Conditions and Restrictions, Article XI, Section 11. Drainage.

- (1) The property owner claiming damage must attempt contact, and in particular, personal contact, with the adjoining owner.
- (2) After owner contact, and there being no satisfactory action resulting, or if contact is not possible, the party claiming damage must send the legal owner, who is allegedly causing the water problem, a certified letter setting forth the problem and requesting correction.
- (3) Upon failure to correct the claimed drainage problem by the owner, the party claiming damage must submit to the Woodbridge Village Association a written opinion by a Registered California Professional Civil Engineer as to the cause and/or source of the drainage water and the suggested actions required to correct the drainage problem.
- (4) The adjoining owner will then be asked if he and/or she wish to likewise promptly obtain their own Registered California Professional Civil Engineer's opinion concerning the alleged problem. If they do, the Board will likewise consider that opinion and determine if the Association should then be involved further. If they do not present another opinion, and it appears from the evidence presented that there is a drainage problem to which the adjoining owner is causing or contributing to in some manner, the Board will proceed as follows below in items (5) and (6):
- (5) When the above conditions are satisfied with the support of the complaining party and competent evidence listed in Item 3, and the Board determines the Association should continue to be involved, the Board will then send a "Request for Resolution" by Alternate Dispute Resolution ("ADR") under the procedures of California Civil Code §1354, to the adjoining owner to attempt to have the alleged drainage problem alleviated.
- (6) If the adjoining party refuses ADR, or if ADR fails to resolve the problem, and the Board determines there is a Drainage Use Restriction violation in which it should then continue to be involved, the Board will consider taking legal action against the adjoining owner with attorney's fees and costs to be awarded to the prevailing party.

(Revised 9-27-95)

Section 4-2. Side Yard Easement Policy.

(a) This section concerns the policy and suggested guidelines of the Woodbridge Village Association with respect to any questions or disputes which may arise from time to time concerning the rights and obligations of the respective owners of property involved with side yard easements in certain tracts within Woodbridge.

(b) Although most of the details of the side yard easement are set out in Section 7 of Article XIII of the Declaration of Covenants, Conditions and Restrictions, the actual conveyance of the easement was separate from the Declaration and came to the dominant tenement via a separate grant deed directly from The Irvine Company. It is a special real property interest distinct from those rights and duties of the Association detailed in the Master

Declaration. Article XIII, the Easement article, lists many easements reserved by The Irvine Company for its own use or granting to third parties such as utility companies, side yard easement owners, etc. The terms of each easement were included in the Master Declaration for convenience purposes so they would not have to be reserved and restated in every grant deed. In the opinion of the Association, the reservation thereof in the Master Declaration did not create any duty in the Association to enforce each private easement right. The Association has reviewed this matter with the draftsman, The Irvine Company, and it concurs in this interpretation as to its intent. The question has been asked as to what course of action should be followed in the event of a dispute between owners as to their rights under the easement. Certain important portions of Section 7(b) should be mentioned, first:

- (1) The servient tenement shall have the right of drainage over, across and upon the easement area for water draining from any dwelling or structure upon the servient tenement.
- (2) The owner of the dominant tenement shall not attach any object to a fence, wall or dwelling belonging to the servient tenement or disturb the grading of the easement area or otherwise act with respect to the easement in any manner which would damage the servient tenement.
- (3) The Association recommends, if any underground installation of gas lines, water lines, utilities, etc., need be installed in the side yard easement area, for purposes other than drainage, the servient tenement shall enter into a written agreement with the dominant tenement regarding this installation and its liability. This written agreement will be recorded by both properties involved as a permanent document of record.

From the foregoing it appears clear, in the opinion of the Association Board of Directors, that the dominant tenement owner generally will have the use of the area as his side yard, and can use it for his own benefit as long as he does not attach any object to a fence, wall, or dwelling belonging to the servient tenement or disturb the grading of the easement area, or otherwise act with respect to the easement area which in any manner could damage the servient tenement's property.

(c) The Board feels the individual homeowners can always mutually agree as to what each can and cannot do with respect to the area as long as they do not act detrimentally with respect to other property. With the dozens, if not hundreds, of various relationships between the various lots and neighbors any number of arrangements could be made between them. It also seems unlikely that any one standard form of agreement between owners could be drafted to encompass all of the various facts, circumstances and possibilities of agreements which individual owners may develop. The Association has neither the financial capability or obligation to become involved in defining any agreement.

(d) Therefore, the following policy has been adopted by the Board of Directors:

In the event of any dispute arising concerning the rights and obligations of the dominant tenement and servient tenement, under a side yard easement, including the interpretation thereof, if the parties cannot agree, they should, in the Association's opinion, submit the matter to binding arbitration as specified in Section 7(b)(v). Each party should use one (1) arbitrator and those two (2) arbitrators should jointly choose one (1) additional arbitrator, for a total of three (3) arbitrators.

The Association has checked with the grantor as to its intent with respect to that paragraph and feel certain the above was the intent of the draftsman. It is suggested

that, although each party may select anyone to be an arbitrator, it would be wise to choose someone who has a valuable professional background with respect to the problem being arbitrated. The decision of the arbitrators would be binding on those owners, but, since each case would be different, not necessarily on other owners.

WOODBIDGE VILLAGE ASSOCIATION CODE

[The next page is 475]

[This page is intentionally left blank]